

DEVELOPMENT

(195) Department.

SERIES.

G.O. No. 5883-44

Dated 23-11-1948

[Despatch Abstract.]

Subj:- Companies - The Public Companies (Limitation of Dividends)
Ordinance, 1948 - Vesting of functions in the Registrar of
- Stock companies, Madras - Concurrence of the Madras
Government of India.

No. M-1940-Tr(D) /48
Government of India.
Ministry of Commerce.

New Delhi, the 5th November, 1948-

From

K. Srinivasan, Esquire, M.A.,
Under Secretary to the Government of India.

To

All the Provincial Governments and the
Chief Commissioners of Provinces.

Sir,

Sub:- The Public Companies (Limitation of Dividends)
Ordinance, 1948 (XXIX of 1948.)

I am directed to forward herewith a copy of the Public Companies (Limitation of Dividends) Ordinance, 1948 (XXIX of 1948), and to say that the Government of India consider that Registrars of Joint Stock Companies, who are entrusted with the administration of the Indian Companies Act in the Provinces, would be in the best position to administer the provisions of this Ordinance also. The duties which may devolve on the Registrars under the Ordinance will mostly be incidental to their functions under the Indian Companies Act. I am accordingly to request the concurrence of the Provincial Government your concurrence to the vesting of these functions in the Registrar of Joint Stock Companies of your Province. The Registrar would doubtless consult the Government of India in very important or doubtful cases. It is not anticipated that the work involved in administering the Ordinance will be appreciable enough to necessitate additional staff. If, however, it becomes necessary to engage additional staff, this Ministry may be approached with concrete proposals for sanction, in the light of actual experience.

The manner of applying the sanctions of the Ordinance relating to the declaration of dividends is explained in the illustrations below:

ILLUSTRATIONS.

(i) During the period of two years (1st April 1946 to 31st March, 1948) three distributions of dividend of Rs. 12,000, Rs. 18,000 and Rs. 9,000 have taken place, for the calendar years, 1945, 46, and 1947, respectively. The average annual dividend of the company is Rs. 13,000.

(ii) During the period of two years aforesaid two distributions of dividend have taken place, one of Rs. 8,000 for a period of six months and one of Rs. 10,000 for a period of twelve months. The total dividends of the company for a period of 18 months being Rs. 18,000, its average annual dividend is Rs. 12,000.

(iii) A company has distributed dividends as follows:

(a) On the 15th February, 1946, an interim dividend of Rs. 50,000 for the calendar year 1945;

(b) On the 1st May, 1946, a final dividend of Rs. 20,000 for the same calendar year, namely 1945;

(c) On the 1st March, 1947, an interim dividend of Rs. 60,000 for the calendar year, 1946;

(d) On the 1st June, 1947, a final dividend of Rs. 20,000 for the same calendar year, namely, 1946;

(e) On the 1st March, 1948, a final dividend of Rs. 60,000 for the calendar year, 1947..

Dividends (b) , (c), (d), (e) all of which were distributed within the two-year period (1946-1948), should be taken into account. The dividend of Rs. 50,000 which was declared before the commencement of the two-year period will also be taken into account, by virtue of the first proviso to section 5. In the result, the total dividend of the company will be deemed to be Rs. 2,10,000 and the total period in respect of which the dividends were distributed being three years, average annual dividend of the company will be Rs. 70,000.

(iv) A company distributes dividends as follows:

(a) On the 1st May, 1946, a dividend of Rs. 30,000 for the calendar year 1945;

(b) On the 1st May, 1947, a dividend of Rs. 40,000 for the calendar year 1946;

(c) on the 1st March, 1948, an interim dividend of Rs. 32,000 for the calendar year 1947, and

(d) On the 1st June, 1948, a final dividend of Rs. 6,000 for the same calendar year, namely; 1947.

By virtue of clause (i) of the second proviso to section 5 of the Ordinance, dividend (d) should be taken into account, although it falls outside the two year period. The total dividends distributed by the company for the three years 1945 1946 and 1947, being Rs. 1,08,000, its average annual dividend will be Rs. 36,000.

(v) The facts are the same as in the previous illustrations, except that the fourth and the last dividend is declared on the 30th November 1948 and not on the 1st June 1948. By virtue of clause (ii) of the second proviso to section 5 of the Ordinance, the third and the fourth dividends should be ignored. The company's dividends for the two years, 1945, and 1946, being Rs. 70,000, its average annual dividend will be Rs. 35,000.

(vi) The facts are the same as in illustrations (iv) and (v) in regard to the first two dividends. On the 1st March, 1948, a third and interim dividend of Rs. 50,000 was declared for the calendar year 1947, and on the 30th November, 1948, a final dividend of Rs. 10,000 is declared for the same year. In this case, It will be advantageous to the company to exercise the option conferred upon it by clause (ii) of the second proviso to section 5 of the Ordinance. If it does so, the total dividends of the company will be Rs. 1,20,000 and its average annual dividend will be Rs. 40,000.

These illustrations may be brought to the notice of the Registrar of Joint Stock Companies for his guidance.

3. I am also to invite your attention to

section 11 of the Ordinance which confers power on the Central Government to exempt any company or class of companies from the Ordinance. It is not proposed to delegate this power to Registrars of Joint Stock Companies.

4. I am to add that the question of framing rules under section 10 of the Ordinance is under the active consideration of the Government of India and that a further communication on this matter will be sent to you in due course.

Yours faithfully,

(SD) K. SRINIVASAN,

Under Secretary to the Government
of India.

/True copy/

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Extract from the Fort St. George Gazette, ^{of India} Friday, dated October, 29, 1948.

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GOVERNMENT OF INDIA
MINISTRY OF LAW

NEW DELHI, the 19th October, 1948.

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ORDINANCE NO. XXIX OF 1948

AN

ORDINANCE

TO LIMIT THE DIVIDENDS WHICH MAY BE PAID BY PUBLIC COMPANIES.

WHEREAS an emergency has arisen which makes it necessary to limit the dividends which may be paid by public companies;

Now, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c.2), the Governor-General is pleased to make the promulgate the following Ordinance:-

PRELIMINARY.

1. Short title, extent and commencement: (1) This Ordinance may be called the Public Companies (Limitation of Dividends) Ordinance, 1948.

(2) It extends to all the Provinces of India, and also to every Acceding State to the extent to which the Dominion Legislature has power to make laws for that State as respects the matters dealt with in this Ordinance.

(3) It shall come into force at once.

2. Definitions: In this Ordinance, unless there is anything repugnant in the subject or context,

(a) "Companies Act" means the Indian Companies Act, 1913 (VII of 1913);

(b) "company" means a public company as defined in clause (13A) of section 2 of the Companies Act, and includes-

(i) the Imperial Bank of India constituted under the Imperial Bank of India Act, 1920 (XLVII of 1920.);

(ii) any trading, banking, insurance or finance corporation constituted by or under any other law in force in India, provided that such corporation, if it had been registered as a company under the Companies Act would not have been a "private Company" within the meaning of that Act; and

(iii) any other incorporated body which the Central Government purposes of this Ordinance,

but does not include a co-operative society registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law relating to co-operative societies in force for the time being in any part of India;

(c) "financial year" means the year commencing

on the ^{1st} day of April.

LIMITATION OF DIVIDENDS.

3. Dividends not to exceed certain limits:- No company shall after the commencement of this Ordinance, distribute as dividend during any financial year, any sum which exceeds, or which when taken with any sum already distributed ~~or~~ as dividend during the same year whether before or after the commencement of this Ordinance, will exceed-

(a) six per cent of the paid-up capital of the company as on the last day of the period in respect of which the dividends is distributed after deducting from such capital all amounts attributable to the capitalisation on or after the 1st ^{of} April, 1946, of one or more of the following namely, reserves, profits and appreciation of assets or

(b) the average annual dividend of the company, determined in the manner*whichever is higher

*specified in sections 5 to 7.

4. Limit of six per cent to be exclusive of income-tax paid by company:- The limit of six per cent specified in clause (a) of section 3 shall be applied to the amount of dividend distributed by the company among its shareholders payments made by the company by way of income-tax being ignored.

5. Dividends and periods to be taken into account for determining average annual dividend:- The average annual dividend referred to in clause (b) of section 3 shall be determined with reference to -

(a) the total of the dividends distributed by such company (otherwise than by way of bonus shares) during the period of two years commencing on the 1st day of April, 1946, and ending with the 31st day of March, 1948, and

(b) the total of the periods in respect of which each such dividend^{has} been distributed, no period however being counted more than once:

Provided that where an interim dividend for any period has been distributed before the 1st day of April 1946, and a final dividend has been distributed in respect of the same period on or after that date but on or before the 31st day of March, 1948, such interim dividend shall be added to the total of the dividends referred to in clause (a);

Provided further that where an interim dividend for any period been distributed on or after the 1st day of April, 1946 and on or before the 31st day of March, 1948, and a final dividend has been or is distributed in respect of the same period after the latter date, then-

(i) if the final dividend was distributed before the 5th October, 1948, it shall be added to the total of the dividends referred to in clause (a);

(ii) if the final dividend was or is distributed on or after the 5th day of October, 1948, the interim dividend and the period in respect of which it was distributed shall not be taken into account for the purposes of this section; but it shall be open to the company to claim that the interim dividend (but not the final dividend) shall be added to the total of the dividends referred to in clause (a), in which case the period in respect of which such interim dividend was distributed shall be taken into account for the purposes of clause (b).

6. Date of distribution of dividend - For the purposes of this Ordinance, a dividend shall be deemed to have been distributed by a company of the date on which the shareholders or their legal representatives have a right to receive it from the company, whether or not it has been actually paid.

7. Provision for increase or reduction in paid-up capital:- (1) (a) Where, subsequent to the distribution by a company of any dividend which has to be taken into account for the purposes of clause (b) of section 3, its paid up capital is increased by any amounts actually paid in cash, or

(b) where, before the distribution of any such dividend, the paid-up capital of a company is increased by any amounts actually paid in cash, but the amounts so paid are not entitled to the benefit of such dividend, such dividend, and every prior dividend which has to be taken into account for the purposes aforesaid, shall be deemed to have been augmented -

(1) pro rata, if the increase took place before the commencement of this Ordinance, and (i) by a sum equal to six per centum per annum of the amounts paid in cash as aforesaid, if the increase took place after the commencement of this Ordinance.

(2) (a) Where subsequent to the distribution by a company of any dividend which has to be taken into account for the purpose of clause (b) of section 3, its paid-up capital is reduced, or

(b) where, before the distribution of any such dividend, the paid-up capital of a company is reduced, but the whole of the capital as it stood before such reduction is entitled to the benefit of such dividend, such dividend, and every prior dividend which has to be taken into account for the purposes aforesaid, shall be deemed to have been diminished PRO RATA

PREFERENCE SHARES.

8. Special provision for preference shares:- Nothing contained in this Ordinance shall be deemed to limit in any way the dividend payable on preference shares issued and subscribed for, before the commencement of this Ordinance.

9. Prohibition of issue of preference shares at more than six per cent:- No company shall, after the commencement of this Ordinance, issue preference shares carrying a right to a dividend at a rate exceeding six per centum per annum.

MISCELLANEOUS.

10. Power to make rules:- (i) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(i) the adaptation of the provisions of this Ordinance with a view to their application to all or any of the bodies declared to be public companies under sub-clause (iii) of clause (b) of section 2;

(ii) the prevention of the evasion of the Provisions of this Ordinance, and the removal of difficulties in giving

effect thereto.

11. Power to make exemptions, etc.:— The Central Government may, by notification in the official Gazette, exempt any company or class of companies from all or any of the provisions of this Ordinance, or make any modification in the application of the said provisions to any company or class of companies.

12. Penalty:— Any director, managing agent, manager or other officer or employee of a company who contravenes or attempts to contravene, or abets the contravention of or attempt to contravene, any of the provisions relating to the distribution of dividends, or the issue of preference shares, contained in this Ordinance or in any rule, notification or order issued thereunder, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(SD) R. RAJAGOPALACHARI,
Governor General,

(SD) K. Y. BHANDARKAR,
Secretary to the Government of India.

/True copy/

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GOVERNMENT OF MADRAS.
ABSTRACT.

& Companies - The Public Companies (Limitation of Dividends)
Ordinance, 1948.

DEVELOPMENT DEPARTMENT.

G.O. Ms. No. 5883

dated 29.11.48.
Read the following:

From the Government of India, Ministry of Commerce,
No. M-1940-Tr (D)/48, dated 5.11.48.

ORDER:

A copy of the letter from the Government of India, Ministry of Commerce, read above, together with a copy of its enclosure is forwarded to the Registrars of Joint Stock Companies for information and guidance.

(By order of His Excellency the Governor)

(Sd) x x
Secretary to Government.

To the Registrars of Joint Stock Companies.
copy of (page. 1-8c.f.0)

/True copy/

mr. 18.8.

Office Assistant,
Madras Record Office.

DEVELOPMENT DEPARTMENT.

Letter Ms. No. 5884, dated 29.11.48.

To

The Secretary to the Government of India,
Ministry of Commerce, New Delhi.

Sir,

Sub:- Companies - The Public Companies (Limitation
of Dividends) Ordinance, 1948.

Ref:- Letter from the Government of India,
Ministry of Commerce, No. M-1940-Tr(D)/
48, dated 5.11.48.

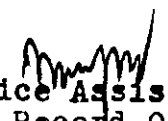
I am directed to communicate to the Government
of India the concurrence of this Government to the
functions under the Public Companies (Limitation of Dividends)
Ordinance, 1948 in the Registrars of Joint Stock Companies, Madras.

(Sd) x x

Copy to the Registrars of Joint Stock Companies.

/True copy/

mr. 18,8.


Office Assistant,
Madras Record Office.

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6.12.48